

## **Chapter 17**

### **The Trial**

#### **77-17-1 Doubt as to degree -- Conviction only on lowest.**

When it appears the defendant has committed a public offense and there is reasonable doubt as to which of two or more degrees he is guilty, he shall be convicted only of the lower degree.

Enacted by Chapter 15, 1980 General Session

#### **77-17-2 Discharging one of several defendants -- To testify for state.**

When two or more persons are included in the same charge, the court may at any time, on the application of the prosecuting attorney, direct any defendant to be discharged or his case severed so that he may be a witness for the prosecution.

Enacted by Chapter 15, 1980 General Session

#### **77-17-3 Discharge for insufficient evidence.**

When it appears to the court that there is not sufficient evidence to put a defendant to his defense, it shall forthwith order him discharged.

Enacted by Chapter 15, 1980 General Session

#### **77-17-4 Conspiracy -- Pleading -- Evidence -- Proof necessary.**

On a trial for conspiracy in a case where an overt act is necessary to constitute the offense, the defendant shall not be convicted unless one or more overt acts are expressly alleged in the information or indictment, and unless one of the acts alleged has been proved. However, proof of overt acts not alleged may be given in evidence.

Enacted by Chapter 15, 1980 General Session

#### **77-17-5 Proof of corporate existence or powers generally.**

In a criminal case the existence, constitution or powers of any corporation may be proved by general reputation, or by the printed statutes of the state, government or country by which this corporation was created.

Enacted by Chapter 15, 1980 General Session

#### **77-17-6 Lottery tickets -- Evidence.**

- (1) On a trial for violation of any of the lottery provisions of the Utah Criminal Code, it is not necessary to prove:
  - (a) The existence of any lottery in which any lottery tickets shall purport to have been issued;
  - (b) The actual signing of any ticket or share, or pretended share of any pretended lottery; or
  - (c) That any lottery ticket, share or interest was signed or issued by the authority of any manager, or of any person assuming to have authority as manager.
- (2) In all cases, proof of the sale, furnishing, bartering or procuring of any lottery ticket, share or interest therein, or of any instrument purporting to be a ticket, or part or share of any ticket shall be evidence that the share or interest was signed and issued according to its purport.

Enacted by Chapter 15, 1980 General Session

**77-17-7 Conviction on testimony of accomplice -- Instruction to jury.**

- (1) A conviction may be had on the uncorroborated testimony of an accomplice.
- (2) In the discretion of the court, an instruction to the jury may be given to the effect that such uncorroborated testimony should be viewed with caution, and such an instruction shall be given if the trial judge finds the testimony of the accomplice to be self contradictory, uncertain or improbable.

Enacted by Chapter 15, 1980 General Session

**77-17-8 Mistake in charging offense -- Procedure -- Witnesses.**

If at any time before verdict or judgment a mistake has been made in charging the proper offense, and it appears that there is probable cause to believe that the defendant is chargeable with another offense, the court may commit him or require him to give bail under Section 77-20-1 for his appearance to answer to the proper charge when filed, and may also require witnesses to give bail for their appearance.

Amended by Chapter 4, 1988 Special Session 2

Amended by Chapter 4, 1988 Special Session 2

**77-17-9 Separation or sequestration of jurors -- Oath of officer having custody.**

- (1) The court, at any time before the submission of the case to the jury, may permit the jury to separate or order that it be sequestered in charge of a proper officer.
- (2) If the jury is sequestered the officer shall be sworn to keep the jurors together until the next meeting of the court, to prevent any person from speaking or communicating with them, and not to do so himself on any subject connected with the trial, and to return the jury to the court pursuant to its order.

Enacted by Chapter 15, 1980 General Session

**77-17-10 Court to determine law; the jury, the facts.**

- (1) In a jury trial, questions of law are to be determined by the court, questions of fact by the jury.
- (2) The jury may find a general verdict which includes questions of law as well as fact but they are bound to follow the law as stated by the court.

Enacted by Chapter 15, 1980 General Session

**77-17-11 Jury to retire for deliberation -- Oath of officer having custody.**

After hearing the court's instructions and arguments of counsel, the jury shall retire for deliberation. An officer shall be sworn to keep them together in some private and convenient place and not permit any person to speak to or communicate with them or to do so himself except upon the order of the court, or to ask them whether they have agreed on a verdict. He shall return them to court when they have agreed and the court has so ordered, or when otherwise ordered by the court.

Enacted by Chapter 15, 1980 General Session

**77-17-12 Defendant on bail appearing for trial may be committed.**

When a defendant who has given bail appears for trial, the court may, at any time after his appearance for trial, order him to be committed to the custody of the proper officer to await the judgment or further order of the court.

Enacted by Chapter 15, 1980 General Session

**77-17-13 Expert testimony generally -- Notice requirements.**

- (1)
  - (a) If the prosecution or the defense intends to call any expert to testify in a felony case at trial or any hearing, excluding a preliminary hearing held pursuant to Rule 7 of the Utah Rules of Criminal Procedure, the party intending to call the expert shall give notice to the opposing party as soon as practicable but not less than 30 days before trial or 10 days before the hearing.
  - (b) Notice shall include the name and address of the expert, the expert's curriculum vitae, and one of the following:
    - (i) a copy of the expert's report, if one exists; or
    - (ii) a written explanation of the expert's proposed testimony sufficient to give the opposing party adequate notice to prepare to meet the testimony; and
    - (iii) a notice that the expert is available to cooperatively consult with the opposing party on reasonable notice.
  - (c) The party intending to call the expert is responsible for any fee charged by the expert for the consultation.
- (2) If an expert's anticipated testimony will be based in whole or part on the results of any tests or other specialized data, the party intending to call the witness shall provide to the opposing party the information upon request.
- (3) As soon as practicable after receipt of the expert's report or the information concerning the expert's proposed testimony, the party receiving notice shall provide to the other party notice of witnesses whom the party anticipates calling to rebut the expert's testimony, including the information required under Subsection (1)(b).
- (4)
  - (a) If the defendant or the prosecution fails to substantially comply with the requirements of this section, the opposing party shall, if necessary to prevent substantial prejudice, be entitled to a continuance of the trial or hearing sufficient to allow preparation to meet the testimony.
  - (b) If the court finds that the failure to comply with this section is the result of bad faith on the part of any party or attorney, the court shall impose appropriate sanctions. The remedy of exclusion of the expert's testimony will only apply if the court finds that a party deliberately violated the provisions of this section.
- (5)
  - (a) For purposes of this section, testimony of an expert at a preliminary hearing held pursuant to Rule 7 of the Utah Rules of Criminal Procedure constitutes notice of the expert, the expert's qualifications, and a report of the expert's proposed trial testimony as to the subject matter testified to by the expert at the preliminary hearing.
  - (b) Upon request, the party who called the expert at the preliminary hearing shall provide the opposing party with a copy of the expert's curriculum vitae as soon as practicable prior to trial or any hearing at which the expert may be called as an expert witness.

- (6) This section does not apply to the use of an expert who is an employee of the state or its political subdivisions, so long as the opposing party is on reasonable notice through general discovery that the expert may be called as a witness at trial, and the witness is made available to cooperatively consult with the opposing party upon reasonable notice.

Amended by Chapter 290, 2003 General Session